IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

THURSDAY, THE NINTH DAY OF JUNE
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE V.V.S.RAO

WRIT PETITION NO : 13829 of 2004

Between:

A.Ravi Kumar, S/o Rajendra Prasad,
R/o Pool Bagh Road, Jagadambanagar, Vizianagaram,
Vizianagaram District

..... PETITIONER

AND

1 The A.P.S.R.T.C.,rep.

by its Vice Chairman & Managing Director, Musheerabad, Hyderabad
2 The Depot Manager, APSRTC Vizianagaram, Vizianagaram District
3 The Regional Manager, A.P.S.R.T.C. Vizianagaram,

Vizianagaram District

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue an appropriate Writ order or direction preferably one in the nature of Writ of Mandamus, declaring the action of the respondent in not conducting the Joint Survey on the entire route on which the vehicle of the petitioner s being operated as arbitrary and illegal and further direct the 2nd respondent to pay the hire charges for the total number of Kilometres that is being operated in a day.

Counsel for the Petitioner:SMT.M.VINOBHA DEVI

Counsel for the Respondents.: MR.K.SRINIVASA RAO

The Court made the following :

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CONTEMPT CASE NO.394 OF 2005

Between:

A.Ravi Kumar, S/o Rajendra Prasad,
R/o Pool Bagh Road, Jagadambanagar, Vizianagaram,
Vizianagaram District

..... PETITIONER

AND

1 The A.P.S.R.T.C.,rep.

by its Vice Chairman & Managing Director, Musheerabad, Hyderabad
2 Sri G.Narsemha Rao, Depot Manager,

APSRTC Vizianagaram, Vizianagaram District
3 The Regional Manager, A.P.S.R.T.C. Vizianagaram,

Vizianagaram District

.....RESPONDENTS

Petition under Sections 10 to 12 of Contempt of Courts Act praying that in the circumstances stated in the accompanying affidavit, the petitioner herein prays that this Hon'ble Court may be pleased to punish the respondents herein under Contempt of Courts Act, 1971 for their action in willfully, wantonly and deliberately floating the orders of this Hon'ble Court made in W.P.M.P.No.17758 of 2004 in W.P.No.13829 of 2004, dt.6.8.2004, passed by this Court.

Counsel for the Petitioner:SMT.M.VINOBHA DEVI

Counsel for the Respondents: MR.K.SRINIVASA RAO

The Court made the following :

THE HON'BLE SRI JUSTICE V.V.S.RAO

WRIT PETITION NO.13829 OF 2004 AND

CONTEMPT CASE NO.394 OF 2005

COMMON ORDER:

The petitioner is owner of bus bearing No.AP 35T 3357. He gave the bus to the respondents on hire to be plied on the route Vizianagaram R.T.C. Complex to Bobbili with effect from 1.8.1997. The hire charges are governed by agreement entered into between petitioner (bus owner) and A.P.State Road Transport Corporation (APSRTC). As there was a dispute with regard to calculation of schedule kilometers arising out of audit objection, the depot manager issued show cause notice for recovering the amount. The amount was also paid after determining the excess amount received by the petitioner and also deducting an instalment. Therefore, petitioner filed a writ petition being W.P.No.21483 of 2001. In effect, he alleged that in spite of judgment of this Court in the said writ petition dt.29.8.2002, joint route survey was not conducted as directed by this Court and schedule kilometers were arrived at in an arbitrary manner. He also alleged as under.

> Immediately I met the Depot Manager, A.P.S.R.T.C., the respondent herein on 21.6.2003 bringing to his notice about the discrepancy and requested him to solve the issue. Though the respondent has assured to rectify the mistake, the same was not done so far. On the other hand, the respondent has sent a cheque calculating the distance as 341.8 Kms. I came to know of the same only on receipt of the cheque in the 2nd week of July, 2003 and immediately I have made representation on 24.7.2003 requesting the respondent to reconsider the issue. Though I have approached the respondent number of times, no reply is forthcoming even till date.

This Court while admitting the matter on 6.8.2004, believing the above allegation made in the affidavit on oath, passed interim orders directing the respondents to consider the representation of the petitioner dt.21.6.2003. Immediately thereafter the respondents came forward with an application being W.V.M.P.No.3704 of 2004 praying this Court to vacate the interim order. The said application is also accompanied by detailed counter affidavit. While denying the various petition allegations adverting to allegation of making representation on 21.6.2003, the Law Officer, who filed counter affidavit on behalf of the respondents made the following averments.

> As per the orders of the Hon'ble High Court Joint Route Survey was conducted with the Hire Bus Owner (attended Sri A.Madhusudhana Rao), the authorized representative of the petitioner, for the Joint route survey).

During the survey he pointed out that there is a difference of 0.1 Kms. For every 5 Kms. Distance of Roads & Buildings, which was considered and taken into account. Accordingly the length of routes worked out were arrived at 341.8 Kms., even then rounded off to 342 Kms., and calculated the payment for 342 Kms. per day. As pointed out by the petitioner, rectified fraction of 0.1 Kms. for every 5 Kms. was considered and there is no dispute to that extent. Further the petitioner Sri A. Ravi Kumar did not approach the Depot Manager, Vizianagaram with any grievance as to the survey or payment of amount and he did not submit any representation dt.21.6.2003 as mentioned in his affidavit.

The petitioner herein filed C.C.No.394 of 2005 alleging that in spite of directions of this Court and in spite of petitioner approaching the respondents several times, respondents failed to comply with the directions of this Court. That is to say, allegedly the respondents did not consider the representation of the petitioner dt.21.6.2003 allegedly submitted by the petitioner to the respondents. When this Contempt Case was listed, learned Standing Counsel for APSRTC brought to the notice of this Court that petitioner never approached the Depot Manager and never made any representation as alleged in the Writ Petition. Therefore, the Court thought it fit to finally hear the Writ Petition as well as the Contempt Case. That is how both the matters are listed and after hearing both the matters this common order is being passed.

Learned counsel for the petitioner, Ms. M. Vinobha Devi strenuously contends that the respondents did not comply with the directions issued by this Court in its order dt.29.8.2002 in W.P.No.21483 of 2001. The respondents arrived at the actual distance on which the bus was plied in arbitrary manner and therefore petitioner met the Depot Manager on 21.6.2003. She, however, is not able to place any material before this Court in support of the statement made in the affidavit that a copy of the representation addressed to Regional Manager, third respondent herein, was duly sent by the method known to law, nor she is able to produce any acknowledgement.

Per contra, learned Standing Counsel for APSRTC submits that the petitioner never approached the Depot Manager nor demurred when the payment was recalculated and the cheque was given him. Indeed, he invites the attention of this Court to the counter affidavit wherein, he stated that after working out length of the route at 342 kms, the amount was calculated for the said distance and that when the joint survey was conducted, Sri A.Madusudana Rao representative of the petitioner was present. A copy of the proceedings dt.6.62005 of the Regional Manager is also placed before this Court wherein it was ordered that the eligible amount will be paid as per the actual kilometers operated.

The short point that would arise for consideration is whether petitioner has any right to be enforced in this Writ Petition. The petitioner initially filed a Writ Petition before this Court questioning letter dt.11.10.2001, whereunder the Depot Manager enclosed cheque for payment deducting an amount of Rs.10,000/- as first instalment towards money deductible from the petitioner on allegation that such amount was paid in excess than the entitlement. This Court following the judgment rendered by

me in W.P.No.21377 of 2001 and batch, dt.29.8.2002 disposed of the Writ Petition directing the respective Regional Managers to issue notices to the owners whose buses were hired and determine actual length of the route with the assistance of the officials of the Roads and Buildings Department in the presence of representative of the bus owners. The respondents duly complied with the same and determined the distance, and in this case the distance of the route determined as 342 Kms. Not satisfied with the same, petitioner chose to file the Writ Petition presumably seeking another similar exercise by the respondents. The petitioner made such allegations which are neither proved nor stand to reason. When the petitioner allegedly made a representation (dated nil, as per the enclosure to the Writ Petition), curiously there is not even a whisper in the affidavit that petitioner made such representation to the Regional Manager. This is a strong circumstance which would belie the case of the petitioner and petitioner therefore must be held to approach this Court with unclean hands disentitling exercise of discretion of this Court.

The Writ Petition is devoid of any merit and is accordingly dismissed with costs.

In view of the orders as above, the Contempt Case is dismissed.

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(V.V.S.RAO, J)

9.6.2005

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To

1. The Chairman and Managing Director,

A.P.S.R.T.C., Musheerabad, Hyderabad

2. Sri G.Narsemha Rao, Depot Manager, A.P.S.R.T.C.,

Vizianagaram, Vizianagaram District

3. The Regional Manager, A.P.S.R.T.C.

Vizianagaram, Vizianagaram District

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